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Public Hearing Date: March 13, 2007
Land Use Action Date: May 8, 2007
Board of Aldermen Action Date: May 21, 2007
90-Day Expiration Date: June 11, 2007

TO: Board of Aldermen

FROM: Michael Kruse Director of Planning and Development
Nancy Radze Chief Planner
Jean Fulkerson, Principal Planner

DATE: March 9, 2006

SUBJECT: **#39-07 ASHWOOD HOMES, INC.** petition for a **SPECIAL PERMIT/SITE PLAN APPROVAL** to exceed the 0.3 Floor Area Ratio for an existing single-family dwelling in a Single Residence 2 district at **48 CLEMENTS ROAD, NEWTON, Ward 7**, on land known as Sec 73, Blk 25, Lot 7, containing approximately 10,354 sf of land.

CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information that will be presented at or after the public hearing that the Land Use Committee will consider in its discussion at a subsequent Working Session.

EXECUTIVE SUMMARY

The petitioner is seeking a special permit to allow a Floor Area Ratio (FAR) of .358, which exceeds the maximum permitted FAR of .30 within an SR2 District. The construction of this single-family residence is complete, in accordance with a building permit issued in May 2003. The excess FAR was discovered in November 2006 as part of a review for a certificate of occupancy when the Inspectional Services Department requested verification of the as-built FAR.

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ZONING

48 CLEMENTS RD

Zoning Districts

Single Res. 1
Single Res. 2
Single Res. 3
Business 1
Business 2
Business 4
Business 5
Lim. Manuf.
Manuf.
Multi-Res. 1
Multi-Res. 2
Multi-Res. 3
Mixed Use 1
Mixed Use 2
OS/Rec.
Public Use

Newton Boundary

Property Boundaries

Ponds/Rivers

Streams

(V Perennial

Pond Names

Buildings

Street Names

Stream Names

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48 CLEMENTS RD

Single Family Residential
Multifamily Residential
Commercial
Industrial
Mixed Use

1 Vacant Land
Golf Course

III Open Space

Private Educational Nonprofit Organizations

III Public Housing Tax Exempt

Newton Boundary

P-7-Property Boundaries

I Ponds/Rivers

Streams

Intermittent
Perennial

Pond Names

 Buildings

Street Names

Stream Names

Address Numbers

1" : 133.2'



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ELEMENTS OF THE PETITION

The petitioner is requesting a special permit to allow the structure to exceed the Floor Area Ratio for a SR-2 zoning district. The house was built on a vacant lot that existed prior to 1953 and qualifies as an "old lot. In May 2003, a building permit (#1351-03, 5/1/03) was issued for the construction of a single-family residence with an attached garage. At the completion of the construction in the fall of 2006, a conditional Certificate of Occupancy was issued (dated November 20, 2006) with the requirement that the Floor Area Ratio be verified and an affidavit provided.

The petitioner did so, but did not include the area of the attached garage in the calculations, believing that the garage was considered to be "below grade" and therefore exempt from the FAR.

A ruling by the Commissioner of Inspectional Services determined that, except for a small portion, the garage was not below-grade and therefore would need to be included in the calculation of Floor Area. The petitioner resubmitted the calculation, with an architect-signed affidavit, indicating that the actual Floor Area Ratio of the structure, with the garage, is .358. This exceeds the maximum permitted FAR of .30 for an "old lot" in an SR-2 zone and, as such, the petitioner is seeking a special permit to exceed the FAR limit pursuant to Section 30-15, Table 1, footnote 5.

II. ZONING RELIEF/APPROVALS

Based on the Chief Zoning Code Official's zoning review (*SEE ATTACHMENT "A"*), the petitioner is seeking relief from or approvals through the following sections of the Zoning Ordinance:

- ***Section 30-15, (p) for a Floor Area Ratio of .358 exceeding the limit of .30 established for the SR3 zone;***
- ***Section 30-23 for Site Plan Approval; and***
- ***Section 30-24 for Special Permit Approval.***

In his zoning review, the CZCO questioned whether the petitioner would also need relief for a portion of the third floor that appeared to be a full floor rather than a half-story. The Commissioner of Inspectional Services reviewed the architectural floor plans and determined that the entire third floor would be considered a half-story and relief was not required. The petitioner's attorney provided the attached memo as documentation. (*SEE ATTACHMENT "B"*). The Commissioner verbally confirmed this information to the Planning Department.

III. SIGNIFICANT ISSUES FOR CONSIDERATION

In reviewing this petition, the Board should consider whether the proposed (now existing) Floor Area Ratio of 0.358 results in a structure that is out of scale with and/or would have (has) a negative impact on the surrounding single-family residential neighborhood.

IV. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Site

The lot at 48 Clements Road is located in a Single Residence 2 District, in Ward 7. Construction was completed on the house in 2006 and is just over 3,700 s.f. on a lot of 10,354 s.f.. The brick and stone façade matches the materials of most other homes on the street.

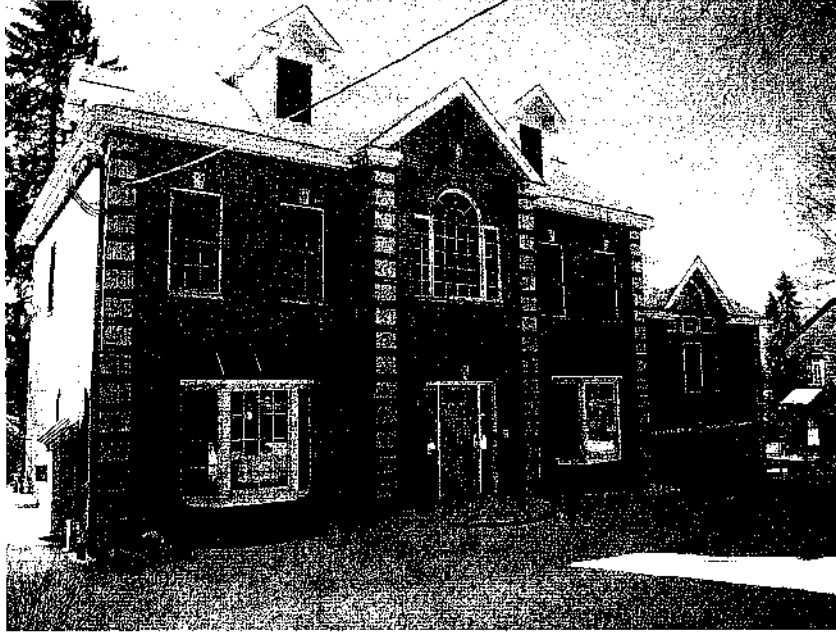


Figure 1. Front Facade 48 Clements Road



Figure 2. View from rear deck of 48 Clements Road

B. Neighborhood

The subject site is located within a larger neighborhood of moderately sized single-family homes, all in the Single Residence 2 Zone. Most of other residences along Clements Road were built in the 1930s and are built in a Tudor style, using materials of brick and stone. The subject site is between Waverly Road and Centre Street in the Newton Centre village.

VI. ANALYSIS

A. Technical Review

The following table illustrates how the as-built property compares to the dimensional and parking requirements of the Zoning Ordinance.

SR2 Pre-1953 Lots	Required	Proposed (As-built)
Min. Lot Size	10,000 s.f.	10,354 s.f.
Min. Frontage	80 ft.	100 ft.
Setbacks		
Front	25 ft.	29.7 ft.
Side	7.5 ft.	10 ft.
Rear	15 ft.	21.2 ft.
Building Height	30 ft.	29.83 ft.
Max Lot Coverage	30%	18.4%
Min. Open Space	50%	68.4%
F.A.R.	0.30	.358
Parking Spaces	2 stalls	2

As shown in the table above, the lot and residence meet all of the dimensional requirements except the Floor Area Ratio. The as-built structure has a gross floor area of 3,706 sq. ft. resulting in a FAR of .358. The structure exceeds the maximum permitted floor area, in relation to the lot area, by 600 sq. ft.

B. Relevant Site Plan Approval Criteria, Section 30-23

1. Consideration of site design, including the location and the relationship of the site's structures to nearby structures. The Structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood.

The single-family residence at 48 Clements Road is a 2 1/2 story structure that appears to be in character with the rest of the block, when viewed from the street, however, because the topography of the lot falls away from the structure in the rear the house, with a walk out basement, and projects 3 1/2 stories above the finished grade along the rear facade. Given the size of the lot and setback constraints, it is likely that if the excess FAR had been discovered prior to construction, then the problem could have been resolved by incorporating the garage into the basement of the residence, or by eliminating some part of the gross

floor area of the living quarters. Constructing a detached garage would not have been a preferred solution because of the difficulty of locating such a garage on this site.

A site visit to the neighborhood conducted by the Planning Department revealed that many of the homes on Clements Road take advantage of the natural slope by locating the garage below grade, and include garages that are accessed in the rear or along the side.

Although the FAR, with the attached garage area included, exceeds the maximum permitted FAR in a SR-2 District, the appearance and location of the garage is an acceptable solution for this site. The garage itself is of reasonable size for the property, with two bays and a size just under 600 s.f.

The petitioner provided an estimate of the FAR of other properties on Clements Road using information found in the Assessor's Database on the City of Newton web-site. *(SEE ATTACHMENT "C"). The square footage information on the Assessors' Database is not considered an accurate measurement of gross floor area for zoning purposes and, as such, cannot be considered more than an estimate of FAR.* This database is meant for informational purposes only as it relates to assessed value and property taxes. A number of the properties included in the petitioner's analysis, for example, have attached garages, enclosed porches, finished attics or basements, all of which may have been included by the Assessor in the "gross floor area" figure on the web site.

According to the petitioner's estimates, the average house size (not including the subject house) is 3,415 s.f.; the average lot area is 12,029; and the average estimated FAR is .29. The petitioner notes that out of the twenty-two structures on Clements Road, thirteen have an estimated FAR of .30 or higher, and one estimated FAR is .39 (15 Clements Rd), and another estimated FAR is .35 (22 Clements Rd). Two very low estimated FAR figures at 25 and 39 Clements lower the average FAR for the street. *The Planning Department concurs with the petitioner that the subject structure has among the higher estimated FAR figures for the street, but it is not dramatically larger, nor is it the largest house on the street.*

2. Screening of the structure from adjoining premises.

The property as developed does not have significant screening or other landscaping, particularly in the rear of the property where 3 1/2 stories are visible to adjoining properties. The petitioner submitted a landscape plan for the site, with the purpose of providing additional screening for abutters, particularly those behind the structure on Stuart Road. The petitioner is hesitant to install the suggested landscaping because the abutters have communicated their desire to maintain the existing available sunlight. The new plant materials indicated on the landscape plan were selected because at maturity they grow to 8 ft. or lower in height. This represents a compromise between providing some additional screening and maintaining existing sunlight. The plan also provides for screening around the central air conditioning units in the back yard.

C. Relevant Special Permit Criteria, Section 30-24

1. Convenience and Safety of vehicular and pedestrian movement within the site.

The garage is located facing the street with a direct access driveway. A public sidewalk is installed along the front property line. The site design does not present any issues of vehicular and pedestrian safety.

2. The specific site is an appropriate location for such use/structure.

The subject lot is within a neighborhood of single-family residences. Though it is somewhat larger than the other structures around it, it does not appear to be out of scale with the neighborhood.

3. The use as developed and operated will not adversely affect the neighborhood

The Planning Department does not anticipate any adverse impact on the neighborhood as a result of the construction of the subject house in excess of the required FAR. The amount of excess gross floor area is not immediately evident to the casual viewer. Moreover, the structure does not appear to be out of character with the surrounding neighborhood, except when viewed from the rear. Additional landscape screening along the property line should help reduce the visual impacts of the structure from the rear.

VII. SUMMARY

The recently constructed single-family residence at 48 Clements Road exceeds the maximum permitted FAR of .30, due to an excess of 600 of gross floor area. This excess FAR appears to have been related to the architect's belief that the garage area was "below grade" and, as such, would not be included in the FAR calculations. If this issue related to the FAR had been discovered prior to the issuance of the building permit, the Planning Department believes that it could have been resolved by either incorporating the garage into the basement of the structure or by otherwise eliminating 600 sq. ft. of floor area from the overall structure.

Now that the structure has been completed, the Board of Aldermen should consider whether the installation of some additional landscaping in the rear yard would mitigate any adverse impact to the neighborhood.

ATTACHMENTS:

ATTACHMENT A: **Zoning Review Memorandum, February 1, 2007**

ATTACHMENT B: **Memo from Stephen Buchbinder, attorney for petitioner.**

ATTACHMENT C: **Floor Area Ratio, Clements Road, provided by petitioner using the City Assessor's database.**

Zoning Review Memorandum

Dt: February 1, 2007

To: Stephen Buchbinder, representing Ashwood Homes, Inc.

CC: Michael Kruse, Director, Department of Planning and Development
John Lojek, Commissioner of Inspectional Services

Fr: Juris Alksnitis, Chief Zoning Code Official

Re: **Request to exceed Floor Area Ratio limit**

Applicant(s): Ashwood Homes, Inc.

Site: 48 Clements Rd.

SBL: Section 73, Block 25, Lot 7

Zoning: Single Residence 2

Lot Area: 10,354 sq. ft.

Current use: New (unoccupied) SF dwelling

Prop. use: Single family

Background:

The subject new construction, dwelling was granted Building Permit #1351-03, dated May 1, 2003. Following changes in property ownership and contractors, construction was substantially completed in fall, 2006. A conditional Certificate of Occupancy was issued dated November 30, 2006, including a requirement that FAR be verified and an affidavit provided. The original calculations had apparently not included the garage. Architect William C. Potter provided a stamped and signed "Area Summary" dated January 10, 2007, which indicates an FAR of 0.358 including the garage area as required by the Commissioner of Inspectional Services. As this exceeds the FAR limit of 0.3 in the SR-2 zone, the applicant needs to obtain permission from the Board of Aldermen to exceed the FAR limit pursuant to Section 30-15, *Table 1, Density & Dimensional Controls in Residence Districts and for Residential Uses*, Footnote 5.

Administrative determinations

1. The subject parcel is a lot created prior to December 7, 1953 and is subject to pre-1953 dimensional controls applicable to a lot in the SR-2 zone.
2. Section 30-15, *Table 1, Density & Dimensional Controls in Residence Districts and for Residential Uses (Table 1)*, sets forth the applicable density and dimensional controls for new lots in the SR-2 zone. The subject building meets most of the applicable controls referenced above, but FAR is calculated as 0.358 exceeding the applicable FAR limit of 0.3. It is also noted the rear portion of the top (third) floor has a sizable finished area under a shed roof, not directly under a sloping ceiling, leading to sliding doors and balcony. This area does not appear to meet the definition of 1/2 story per *Section 30-1, Story, Half*. As a result, that the applicant needs to further clarify this

matter, may need recalculate the FAR and may also need to seek relief for a third story to the extent necessary. Table 1, Footnote 5 provides that the Board of Aldermen may allow an increased FAR by special permit, provided the proposed structure is "consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood." In addition, Table 1, Footnote 4 provides that the Board of Aldermen may allow three stories, pursuant to a similar finding.

3. While information has been provided regarding FAR and gross floor area of immediately abutting properties, the applicant may wish to provide information as to building height and other neighborhood characteristics for consideration by the Board in its deliberations pursuant to Table 1, Footnotes 4 and 5. It is also noted that information on natural areas and landscaping is not included on submitted plans. The above should be submitted not later than filing of the formal petition with the Clerk of the Board of Aldermen.
4. Sections 30-15(m)(5), 30-19(d)(1), and 30-19(g) set out the applicable provisions as to parking and drives. Based on submitted plans, the proposed garage and driveway entrance meet the applicable requirements.
5. As the applicant's surveyor has stated on plan that grades have not been altered in excess of 3 ft., no relief is necessary pursuant to Section 30-5(b)(4).
6. See "Zoning Relief Summary" below.

<i>Ordinance</i>	<i>Zoning Relief Summary</i>	<i>Action Required</i>
	<i>Building</i>	
30-15, Table 1 Fn4	Approval of third story at rear of dwelling in the SR-2 zone, to the extent necessary (see Item #2, above).	X
30-15, Table 1 Fns	Approval of FAR of 0.358 (or greater) exceeding the FAR 0.3 limit in the SR-2 zone.	X
	Site	
30-23	Site plan approval, including landscape plan.	X
	Parking	
	N/A	N/A
	Nonconformity	
	N/A	N/A
	Special Permit	
30-24(d)	Approval of special permit to allow third story in rear, to the extent necessary	X
30-24(d)	Approval of special permit to increase FAR above 0.3.	X

Plans and materials reviewed:

- Letter from Peter Bronson, Zoning Administrator, March 17, 2003.

- Certificate of Use and Occupancy, issued with conditions November 30, 2006.
- Area Summary sheet, dated January 10, 2007, stamped and signed by William C. Potter, Registered Architect.
- Plan titled "Area Plan of Land, Newton, Mass., to Accompany the Petition of Ashwood Home, Inc.", dated January 3, 2007, prepared by VTP Associates, Land Surveyors Civil Engineers, 132 Adams St., 2nd Floor Suite 3, Newton, MA 02458, stamped and signed by James J. Abely, Professional Land Surveyor.
- Plan titled "Topographic As-Built, Newton, Mass., Showing As-Built Conditions at #48 Cements Rd." dated January 13, 2005, revised 2/1/2007, prepared by VTP Associates, Land Surveyors – Civil Engineers, 132 Adams St., 2nd Floor Suite 3, Newton, MA 02458, stamped and signed by James J. Abely, Professional Land Surveyor.
- Plan set titled "Clements Realty Trust, 48 Clements Ave., Newton, MA", dated 3/3/03, prepared by William C. Potter, Architect, stamped and signed on Dwg. 1 by William C. Potter, Registered Architect [all other drawings unstamped], consisting of the following:
 - > Dwg. 1 – Floor Plans, Sections
 - > Dwg. 2 – Floor Plans, Elevation
 - > Dwg. 3 – Floor Plans, Elevation
 - Dwg. 4 – Elevation
 - Dwg. 5 – Elevations, Sections
 - > Dwg. 6 – Foundation Plan
 - Dwg. 7 – Section
 - Dwg. F1 – 1st Floor Framing
 - > Dwg. F2 – 2nd Floor Framing
 - > Dwg. FR – Roof Framing

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INTEROFFICE:: MORANDUM.

TO: FILE

FROM: SJB ,././3

SUBJECT: ASHWOOD HOMES/48 CLEMENTS ROAD 6504-B

DATE: FEBRUARY 5, 2007

I met with John Lojek and Joe Spadea at 10:00 a.m. on this date. John reviewed the issue which Juris Alksnitis had raised relative to the possibility of a third story. John left the room to speak with Juris, returned and indicated that in John's view there is no third story. Accordingly, I subsequently filed the special permit application addressing only the FAR issue.

FLOOR AREA RATIOS

CLEMENTS ROAD

Address	House Size	Lot Area	FAR
06 Clements Road	3,979	12,497	.32
11 Clements Road	4,058	12,502	.32
14 Clements Road	3,152	15,883	.20
15 Clements Road	3,808	9,707	.39
22 Clements Road	5,047	14,407	.35
25 Clements Road	1,680	10,173	.17
30 Clements Road	3,587	12,717	.28
33 Clements Road	3,549	10,363	.34
38 Clements Road	3,681	11,362	.32
39 Clements Road	1,952	10,731	.18
47 Clements Road	3,471	10,848	.32
54 Clements Road	3,294	10,660	.31
55 Clements Road	3,028	11,354	.27
61 Clements Road	3,673	14,274	.26
62 Clements Road	3,612	11,781	.31
70 Clements Road	3,442	12,837	.27
77 Clements Road	3,141	9,937	.32
78 Clements Road	4,086	19,881	.21
85 Clements Road	2,842	9,236	.31
86 Clements Road	4,456	14,409	.31
93 Clements Road	2,610	9,194	.28
94 Clements Road	2,972	9,884	.30

Average House Size 3,415

Average Lot Size 12,029

Average FAR .29

Locus: 48 Clements Road House Size: 3,708 Lot Area: 10,354 FAR: .358